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LATHARSIE WILLIAMS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

LATHARSIE WILLIAMS,

Plaintiff,

VS.

AMERICREDIT FINANCIAL
SERVICES, INC., PATRICK K.
WILLIS COMPANY, INC., and
AUTOMOBILE RECOVERY
BUREAU, INCORPORATED,

Defendants.

Case No: 17-CV-3083

COMPLAINT FOR WRONGFUL REPOSSESSION

1 Plaintiff Latharsie Williams hereby complains against defendants Americredit
2 Financial Services, Inc. (“GM Financial”), Patrick K. Willis Company, Inc. (“PK
3 Willis”), and Automobile Recovery Bureau, Incorporated (“ARB”), and alleges on
4 information and belief as follows:

5 **OPERATIVE FACTS**

6 1. On or about March 1, 2017, plaintiff purchased a 2017 Chevrolet
7 Cruze from Ron Craft Chevrolet Cadillac in Baytown, Texas, which she intended to
8 use primarily for personal, family or household purposes. Plaintiff signed a retail
9 installment sales contract which gave the dealership a security interest in the
10 vehicle. The dealership assigned the retail installment sale contract and security
11 interest to defendant Americredit Financial Services, Inc., which does business as
12 GM Financial. Plaintiff subsequently fell behind on the contract payments.

13 2. GM Financial hired defendant PK Willis to repossess plaintiff’s
14 vehicle, and PK Willis in turn hired defendant ARB as its agent to recover the
15 vehicle.

16 3. Defendant ARB breached the peace during the repossession, in
17 violation of Texas Bus. & Commerce Code § 9.609(b)(2). In a public parking lot,
18 ARB banged into the rear of plaintiff’s vehicle with its tow truck, while plaintiff
19 was still inside the vehicle. Plaintiff honked her horn. ARB ignored the horn, and
20 jacked up plaintiff inside the vehicle, injuring plaintiff’s back and damaging her
21 iPhone. A barefoot ARB employee dressed in pajamas came to plaintiff’s door, and
22 plaintiff, not sure if she was being assaulted, refused to open the door. Another
23 ARB employee, a very large man, then came to plaintiff’s window and ordered her
24 out of the car, stating it didn’t belong to her. Plaintiff objected and refused to
25 move. Ignoring the objection, ARB’s employee suddenly reached across plaintiff
26 and snatched her keys out of the ignition, from inside the vehicle. Jacked up inside
27 the car, and with no keys, plaintiff was forced to relinquish the vehicle to ARB.

28 4. Defendant GM Financial mailed plaintiff a notice of sale of the vehicle

1 (“NOI”). The NOI violated the UCC at Texas Bus. & Commerce Code §
2 9.614(1)(A), because it failed to describe the secured party. GM Financial’s NOI
3 described the secured party as “AOC II – RS,” which was incorrect.

4 5. As a result of the above UCC violations, plaintiff does not owe
5 defendant GM Financial a deficiency balance, by operation of Texas Bus. &
6 Comm. Code § 9.626(b). Plaintiff is also entitled to damages and statutory
7 damages pursuant to Texas Bus. & Comm. Code § 9.625(b) and (c).

8 6. Plaintiff had personal possessions in the vehicle. In violation of Texas
9 Occupations Code § 2303.151, defendant ARB failed to mail plaintiff a notice by
10 certified mail, stating the information required by Tex. Occup. Code § 2303.153,
11 including the amounts of storage and other charges plaintiff would have to pay
12 when the vehicle was claimed, and the location of the storage facility.

13 7. In violation of Texas Finance Code § 348.407, defendant GM
14 Financial failed to issue plaintiff a notice within 15 days of discovering that there
15 was personal property in the vehicle, informing plaintiff of the location where
16 plaintiff could claim her property. GM Financial’s notice disclosed PK Willis as
17 the repossession company, and PK Willis’ address in Sacramento, California as the
18 location of the personal property. In fact, plaintiff’s personal possessions were in
19 the custody of ARB in Texas.

20 8. Eventually, plaintiff recovered from ARB some of her personal
21 possessions that had been in the vehicle. However, ARB stole plaintiff’s Gucci
22 glasses.

23 **JURISDICTION AND VENUE**

24 9. The court has original jurisdiction over this matter pursuant to 15
25 U.S.C. § 1692k(d). The court has supplemental jurisdiction over the state law
26 claims pursuant to 28 U.S.C. § 1367.

27 10. Venue is proper in the Southern District of Texas because a substantial
28 part of the events or omissions giving rise to the claim occurred in this district, and

1 defendants are subject to the court's personal jurisdiction in this district.

2 **PARTIES**

3 11. Plaintiff is a natural person over the age of 18 years and is a resident of
4 Houston, Texas.

5 12. Defendant Americredit Financial Services, Inc. is a Delaware
6 corporation with its principal place of business in Fort Worth, Texas.

7 13. Defendant Patrick K. Willis Company, Inc. is a California corporation
8 with its principal place of business in El Dorado Hills, California.

9 14. Defendant Automobile Recovery Bureau, Incorporated is a Texas
10 corporation with its principal place of business in Houston, Texas

11 15. At all times mentioned herein, each defendant was the agent or
12 employee of each of the other defendants and was acting within the course and
13 scope of such agency or employment. The defendants are jointly and severally
14 liable to plaintiff.

15 **FIRST CAUSE OF ACTION**

16 **(Against Defendants PK Willis and ARB for Violations of the Fair Debt
Collection Practices Act, 15 U.S.C. § 1692 et seq.).**

17 16. Plaintiff realleges and incorporates herein by reference the allegations
18 of all paragraphs above.

19 17. Plaintiff is a "consumer" who allegedly owed a "debt", and defendants
20 are "debt collectors", as those terms are defined at 15 U.S.C. § 1692a. Defendants
21 use instrumentalities of interstate commerce or the mails in a business the principal
22 purpose of which is the enforcement of security interests.

23 18. Defendants violated 15 U.S.C. § 1692f(6) by taking nonjudicial action
24 to effect dispossession or disablement of property when (1) there was no present
25 right to possession of the property claimed as collateral through an enforceable
26 security interest; and/or (2) the property was exempt by law from such
27 dispossession or disablement.

28 19. Defendants had no present right to repossess plaintiff's vehicle in

1 breach of the peace, but did so in violation of Texas Bus. & Commerce Code §
2 9.609(b)(2).

3 20. Plaintiff is entitled to actual damages sustained as a result of
4 defendants' conduct, in an amount according to proof, pursuant to 15 U.S.C. §
5 1692k.

6 21. Plaintiff is entitled to statutory damages of \$1,000 against each
7 defendant, pursuant to 15 U.S.C. § 1692k. Defendants have frequently and
8 persistently failed to comply with the FDCPA, and have violated the FDCPA
9 intentionally. The nature of defendants' violations justifies the maximum statutory
10 damages award available.

11 22. Plaintiff is entitled to the costs of the action, together with a reasonable
12 attorneys fee, pursuant to 15 U.S.C. § 1692k.

13 WHEREFORE, plaintiff prays for relief as set forth below.

14 **SECOND CAUSE OF ACTION**
15 **(Against Defendant GM Financial for Violations of the Uniform Commercial**
16 **Code, Texas Bus. & Commerce Code §§ 9.609, 9.614, and 9.625)**

17 23. Plaintiff realleges and incorporates herein by reference the allegations
18 of all paragraphs above.

19 24. Defendant violated Texas Bus. & Commerce Code § 9.609(b)(2) by
20 repossessing plaintiff's vehicle in breach of the peace.

21 25. Defendant violated Texas Bus. & Commerce Code § 9.614(1)(A),
22 because it failed to describe the secured party in its NOI.

23 26. Plaintiff is entitled to recover the actual damages caused by
24 defendant's failure to comply with the Uniform Commercial Code, pursuant to
25 Texas Bus. & Commerce Code §§ 9.625(b) and (c)(1).

26 27. Plaintiff is entitled to recover the credit service charge plus ten percent
27 of the principal amount of the obligation, pursuant to Texas Bus. & Commerce
28 Code § 9.625(c)(2).

28 28. Plaintiff does not owe defendant GM Financial a deficiency balance,

1 by operation of the absolute bar rule codified at Texas Bus. & Commerce Code §
2 9.626(b).

3 29. Plaintiff is entitled to an injunction to restrain collection by defendant
4 of any deficiency balance, including any derogatory credit reporting on plaintiff's
5 credit reports, pursuant to Texas Bus. & Commerce Code § 9.625(a).

6 30. Plaintiff is entitled to recover attorneys fees and costs pursuant to
7 Texas Civil Practice And Remedies Code § 38.001(8).

8 WHEREFORE, plaintiff prays for relief as set forth below.

9 **THIRD CAUSE OF ACTION**
10 **(Against All Defendants For Violations Of The Texas Debt Collection**
11 **Practices Act, Texas Finance Code § 392.001 et seq.)**

12 31. Plaintiff realleges and incorporates herein by reference the allegations
13 of all paragraphs above.

14 32. Plaintiff is a consumer within the meaning of Tex. Fin. Code §
15 392.001(1).

16 33. Defendants are debt collectors within the meaning of Tex. Fin. Code §
17 392.001(6), in that they directly or indirectly engage in actions, conduct, or
18 practices in collecting, or in soliciting for collection, consumer debts that are due or
19 alleged to be due a creditor.

20 34. Defendants violated Tex. Fin. Code § 392.301(a)(1) by using violence
21 or other criminal means to cause harm to a person or property of a person.

22 35. Defendants violated Tex. Fin. Code § 392.304(a)(19) by using a false
23 representation to collect a debt, when ARB told plaintiff that her car did not belong
24 to her anymore.

25 36. Plaintiff is entitled to actual damages, pursuant to Tex. Fin. Code §
26 392.403(a)(2).

27 37. Plaintiff is entitled to reasonable attorneys fees and costs, pursuant to
28 Tex. Fin. Code § 392.403(b).

WHEREFORE, plaintiff prays for relief as set forth below.

1 **FOURTH CAUSE OF ACTION**
2 **(Against Defendant GM Financial For Violations Of The Texas Motor Vehicle**
3 **Installment Sales Act, Texas Fin. Code § 348.001 et seq.)**

3 38. Plaintiff realleges and incorporates herein by reference the allegations
4 of all paragraphs above.

5 39. Defendant GM Financial violated Texas Finance Code § 348.407, by
6 failing to issue plaintiff a notice within 15 days of discovering that there was
7 personal property in the vehicle, which informed plaintiff of the information
8 required by that section.

9 40. Plaintiff is entitled to recover three times her actual economic loss
10 caused by defendant's violations, pursuant to Texas Finance Code § 349.003(a)(1).

11 41. Plaintiff is entitled to reasonable attorneys' fees, pursuant to Texas
12 Finance Code § 349.003(b).

13 WHEREFORE, plaintiff prays for relief as set forth below.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, plaintiff prays for the following relief:

- 16 1. For actual damages, including economic harm and mental anguish;
17 2. For statutory damages;
18 3. For treble damages;
19 4. For injunctive relief;
20 4. For pre-judgment interest to the extent permitted by law;
21 5. For an award of attorneys' fees, costs and expenses incurred in the
22 investigation, filing and prosecution of this action; and
23 6. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury under the United States and Texas constitutions.

Dated: October 13, 2017

Respectfully Submitted,
TRUEBLOOD LAW FIRM

By: /s/
Alexander B. Trueblood

Attorney-In-Charge for Plaintiff
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